

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ANTONIO MURO-LAMAS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent

Case No. C04-5680JET

ORDER

Defendant has filed a Motion For Enlargement of Time to file a Motion for Certificate of Appealability.

Having considered the entirety of the record and files herein, the Court finds and rules as follows:

1. In order for the appeal to proceed, this Court must issue a Certificate of Appealability. See 28 U.S.C. §2253; United States v. Asrar, 108 F.3d 217 (9th Cir. 1997).

2. This court will construe a notice of appeal of a final order in a habeas proceeding as a petition for a certificate of appealability under 28 U.S.C. §2253. A notice of appeal has been filed in the above-captioned case. Therefore, Petitioner need not file a separate petition for a certificate of appealability.

1 3. Any response to the petition was due from the government by Monday, April 4,
2 2005. No response has been received. Thus, no reply was necessary from the Petitioner by April 8,
3 2005, and Defendant's Motion For Extension of time is DENIED as MOOT.

4 4. For the certificate of appealability to issue, this Court must determine that "the
5 applicant has made a substantial showing of the denial of a constitutional right" and the Court must
6 "indicate which specific issue or issues satisfy the showing." 28 U.S. C. 2253(c)(2)-(3). If the Court
7 denies the certificate, it must "state te reasons why such a certificate should not issue."
8 Fed.R.APP.P. 22(b); Asrar, 108 F.3d at 218.

9 5. For the reasons set for in its denial of Defendant's 2255 petition, the Court declines
10 to issue a Certificate of Appealability because Defendant Antonio Muro-Lamas has failed to make "a
11 substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2).

12 IT IS SO ORDERED.

13 The clerk of the court is instructed to send uncertified copies of this Order to all counsel of
14 record.

15
16 DATED this 8th day of April, 2005.

17
18 /s Jack E. Tanner

19 _____
20 JACK E. TANNER
21 SR. UNITED STATES DISTRICT JUDGE